IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 813 OF 2006

Mr. Virendrakumar Jamnalal Gupta ....Applicant.

V/s

The State of Maharashtra,
through the
Senior Inspector of Police,
Sales Tax Police Cell,
CID, Mumbai - 400 010. ....Respondent.

Mr. Ganesh Thakur i/b Khaitan & Jaikar for the applicant.

Ms. S.V. Gajre, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 10th April, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. This is an application for anticipatory bail. The applicant apprehends arrest in connection with the FIR which is registered with the respondent vide FIR No.00/2005.

3. It is the case of the prosecution that the applicant had issued two bogus Challans in Form-C and Form-F and had claimed an exemption. When this aspect was noticed, a complaint was lodged against the

present applicant. On 18/3/2006, the applicant was heard. On that date, the learned Counsel appearing on behalf of the applicant submitted that he would deposit the amount which was due and payable to the Sales Tax Department alongwith the penalty which was imposed and which is mentioned in Exhibit-E.

4. It is the contention of the applicant that after the complaint was filed, the applicant filed an application under the Amnesty Scheme and while filing the said application, an undertaking was given that all pending appeals would be withdrawn. The said Amnesty Scheme, however, was not accepted and the application of the applicant for amnesty was rejected and he was directed to pay 100% of the tax which was due and payable. It is the contention of the applicant that against the said order, the applicant has preferred an appeal which is pending. In the meantime, the applicant preferred an application for anticipatory bail. This application, however, was rejected by the Sessions Court.

5. On the next date, however, the learned Counsel appearing on behalf of the applicant stated that he had not received any instructions regarding the payment of the said dues. On the earlier date, it was

made clear that if the entire amount was not deposited, the application would be rejected. Therefore on 17/3/2006, the following order was passed:-

> "For the reasons separately recorded, the application for anticipatory bail is rejected."

The said order, however, was not signed and the matter was kept for dictating judgment on the next date i.e. on 18/3/2006. On that date, the learned Counsel for the applicant submitted that the applicant shall deposit 100% amount, reference of which is made on page 45 of the application in clause (1) of Exhibit-E. The matter was, thereafter, kept on 28/3/2006 on which date the learned Counsel for the applicant submitted that the entire undeposited tax amount has been deposited.

6. The case of the prosecution is that two Forms which were submitted by the applicant viz. Form-C and Form-F were bogus and fabricated and, therefore, the applicant was liable to be prosecuted. The facts disclose that against the order of rejection of amnesty scheme, the appeal has been preferred and the

same is pending and is not yet decided. It is an admitted position that if the said appeal is allowed the applicant would have benefit of being exempted from any criminal proceedings being filed against him.

7. The learned Counsel for the applicant has submitted that the applicant has deposited 100% amount, reference of which is made on page 45 of the application in clause (1) of Exhibit-E which reads as under:-

> "1) You have not paid 100% of the tax dues as the tax dues are undisputed tax dues."

8. The learned APP, on instructions from the Investigating Officer, submits that the said amount as reflected in the above statement has been paid by the present applicant.

9. Since the appeal against the rejection of the Amnesty Scheme is admittedly pending and is not yet decided and since the amount of dues has been paid by the present applicant, in my view, custodial interrogation of the applicant is not necessary. The application for anticipatory bail in these circumstances is allowed. The applicant, in the event

of his arrest in connection with C.R. No.00/2005 registered with the Senior Inspector of Police, Sales Tax Police Cell, CID, Mumbai - 400 010, be released on bail in the sum of Rs 25000/- with one or two sureties in the like amount. The applicant shall co-operate with the Police. The applicant shall report to the Investigating Officer as and when he is called. The applicant shall not tamper with the evidence or threaten any of the witnesses.

10. If any complaint is received by the Investigating Officer to the effect that the applicant has tampered with the evidence or threatened any of the witnesses, liberty is granted to the Public Prosecutor to apply for cancellation of bail.

11. Application is accordingly disposed of.

V.M. KANADE, J.